No. 83-1063

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

BRUMLEY ESTATE, ET AL.,

Petitioners,

v.

IOWA BEEF PROCESSORS, INC.,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

LEE A. FREEMAN, JR.*
JAMES T. MALYSIAK
FREEMAN, ROTHE, FREEMAN
& SALZMAN, P.C.
Suite 2700
401 North Michigan Avenue
Chicago, Illinois 60611
(312) 222-5100

Counsel for Respondent, Iowa Beef Processors, Inc.

* Counsel of Record

Midwest Law Printing Co., Chicago 60611, (312) 321-0220

QUESTION ACTUALLY PRESENTED FOR REVIEW

Petitioners suggest that the question presented is whether the Fifth Circuit Court of Appeals erred, in conflict with *Parklane Hosiery Co. v. Shore*, 439 U.S. 322 (1979), in conferring "complete discretion" on the District Court to refuse to apply offensive collateral estoppel. In fact, the Fifth Circuit did no such thing, but instead merely held that, on the specific facts and circumstances presented, the District Court had not abused its discretion in rejecting offensive collateral estoppel. Thus, the question actually presented is whether the District Court and Court of Appeals applied *Parklane* correctly to the particular facts of this case.

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STATEMENT OF THE CASE

This case was one of four similar cases filed in early 1976 involving cattle sold by cattlemen in the South Plains of Texas in early 1974 to James Louis Heller. Heller had bought the cattle and resold them to respondent Iowa Beef Processors, Inc. ("IBP"). He was fully paid by IBP for them, but became insolvent before paying the cattlemen for the cattle. After recovering substantial amounts from Heller's cattle-dealer bond and bankruptcy estate, the cattlemen sued IBP claiming Heller had bought the

cattle as IBP's agent and that IBP was liable for the purchase price.

Prior to the trial of any of the four cases, petitioners moved for summary judgment on the ground that offensive collateral estoppel should be applied based on *Valley View Cattle Co. v. Iowa Beef Processors, Inc.*, 548 F.2d 1219 (5th Cir. 1976), *cert. denied*, 434 U.S. 855 (1977), in which a jury had found that Heller had bought the cattle involved there as IBP's agent. Chief District Judge Woodward, then presiding over all four cases, rejected petitioners' contentions.

Lubbock Feed Lots was then tried to a jury, which found that Heller had acted as IBP's agent in buying the cattle in question. The Fifth Circuit affirmed the jury's verdict with an opinion authored by Judge Tate (who also wrote the Fifth Circuit opinion in this case), *Lubbock Feed Lots, Inc. v. Iowa Beef Processors, Inc.*, 630 F.2d 250 (5th Cir. 1980), but did not question the District Court's rejection of collateral estoppel.

Prochemco and *Rufenacht* were then consolidated for a bench trial before District Judge Robinson, who specifically found that offensive collateral estoppel did not apply and that Heller had *not* acted as IBP's agent in the transactions in issue, *Rufenacht v. Iowa Beef Processors, Inc.*, 492 F.Supp. 877, 881, 883-885 (N.D. Tex. 1980); and the Fifth Circuit affirmed on all points, 656 F.2d 198 (5th Cir. 1981), *cert. denied*, 455 U.S. 921 (1982).

This case was then tried to a jury. Chief Judge Woodward again rejected petitioners' collateral estoppel contentions, and the jury found that Heller had not acted as IBP's agent in the transactions in issue. The Court of Appeals affirmed, 704 F.2d 135, *rehearing denied*, 715 F.2d 996 (5th Cir. 1983) (Petn. App. A-1-26).

REASONS FOR DENYING THE WRIT

I

THE PETITION PRESENTS A FACT QUESTION FOR REVIEW

The Fifth Circuit below followed its decision in *Rufenacht* and held that collateral estoppel was not applicable because the issues in this case were not identical to those decided in *Lubbock Feed Lots*. Petitioners concede (Petn. 8) that the jury's findings in the earlier case did not expressly decide the issues in this case because they were limited to the transactions there in suit. Petitioners rely instead on the "necessary inference" rule, but this would admittedly mean that "the court must examine the evidence produced at the first trial" (Petn. 7) to determine whether the earlier jury necessarily made implicit findings applicable to this case as well.

Therefore, granting review here would require this Court to undertake a specific factual examination of the voluminous *Lubbock Feed Lots* record in addition to the record in this case to decide whether the District Court and Court of Appeals had erred in finding that the issues necessarily decided in the two cases were not identical. This is indisputably not the type of question for which certiorari jurisdiction is provided. See Supreme Court Rule 17. Moreover, the lower courts, which have dealt with the specific issues of this series of cases over a period of several years, have examined the issue closely and have unanimously rejected petitioners' contentions on several different occasions. Indeed, Chief Judge Woodward presided at the trials in both this case and *Lubbock Feed Lots*, and Circuit Judge Tate, who wrote the opinion for the Fifth Circuit here, also wrote the *Lubbock Feed Lots*

opinion. Both found collateral estoppel inapplicable under the circumstances presented because the juries in the earlier cases were asked to decide only Heller's status in the transactions before them, and that was all they did decide.

Thus, there is no reason for this Court to substitute its judgment on this factual matter for the unanimous view of the two lower courts that are much more familiar with the facts of the case. There is no conflict with this Court's decision in *Parklane Hosiery*, since that decision granted "broad discretion" to the trial court to determine whether offensive collateral estoppel should be applied, 439 U.S. at 331, and that discretion was fully and properly exercised here.

II

COLLATERAL ESTOPPEL SHOULD NOT BE APPLIED WHERE THERE ARE PRIOR CONTRARY JUDGMENTS

The Fifth Circuit also rejected collateral estoppel because it would be unjustified to invoke the doctrine based on *Lubbock Feed Lots* and ignore *Rufenacht*, which held that Heller had not acted as IBP's agent in buying the cattle in question there. (Petn. App. A-6-7.)[1]

Petitioners attempt to avoid this problem by erroneously stating (Petn. 12-13) that the "jury finding" in *Rufenacht* was merely that the plaintiffs had failed to prove agency and, therefore, "[b]ecause there was *no* finding in *Ru-*

[1] In fact, this case was closely related to *Rufenacht* since several of the transactions in issue occurred at the two feedlots involved in *Rufenacht*, but there was no such interrelationship between this case and *Lubbock Feed Lots*.

fenacht that Heller was *not* IBP's agent, the case is not inconsistent with *Lubbock Feed Lots.*" (Emphasis in original).

In fact, *Rufenacht* was tried *to the Court* and not to a jury, and District Judge Robinson *explicitly found* "that Heller was not the agent of IBP, but rather was an independent cattle buyer engaging in the business of buying and selling cattle for a profit at his own risk." *Rufenacht, supra,* 492 F.Supp. at 881. This finding was expressly upheld on appeal. *Rufenacht, supra,* 656 F.2d at 204.

Thus, petitioners necessarily are asking this Court to hold that the Fifth Circuit erred on this point and that collateral estoppel should be applied even though there is a prior contrary judgment. Such a contention is totally unfounded and should be summarily rejected by this Court as it was by the Court of Appeals.

III

IT WOULD BE FUNDAMENTALLY UNFAIR TO APPLY COLLATERAL ESTOPPEL HERE

Quite apart from the basic flaws in petitioners' arguments, it would be fundamentally unfair to apply collateral estoppel here. Prior to the *Lubbock Feed Lots* trial, the District Court ruled that the four cases would not be consolidated for trial. Relying on that decision and the District Court's rejection of collateral estoppel, IBP prepared for trial in each case on its own facts and transactions. Consequently, the District Court in *Rufenacht, supra,* 492 F.Supp. at 884, concluded that:

> To apply the doctrine in the present suit would deprive defendant of the right to present evidence concerning the transactions now in question which would

not have been admissible in the *Valley View* litigation.[2]

In contrast, petitioners cannot legitimately complain of any unfairness in the lower courts' rejection of collateral estoppel. They had a full hearing of their claims and have not even contended on appeal that the jury's verdict was not supported by sufficient evidence.

CONCLUSION

The District Court and the Court of Appeals panel which have considered and rejected petitioners' arguments for offensive collateral estoppel in this case should be applauded for their conscientious and painstaking review of this fact-bound question. There is no basis whatever for doubting the validity of their decisions, nor certainly any reason for this Court to undertake further review.

[2] The District Court also held that it would be unfair to give collateral estoppel effect to the *Lubbock Feed Lots* judgment. 492 F.Supp. at 885.

Therefore, respondent asks the Court to deny the petition.

Respectfully submitted,

LEE A. FREEMAN, JR.*
JAMES T. MALYSIAK
FREEMAN, ROTHE, FREEMAN
& SALZMAN, P.C.
Suite 2700
401 North Michigan Avenue
Chicago, Illinois 60611
(312) 222-5100

Counsel for Respondent
Iowa Beef Processors, Inc.

* Counsel of Record

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